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ADEMARK OFFICE

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### **Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Lisa Freda, Julie Kaplan and Tammy Pavlock		
Entity	Joint Venture	Citizenship	District of Columbia
Address	5002 V Street NW Washington, DC 20007 UNITED STATES		

Attorney	Thomas E. Kenney, Esq.
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	UNITED STATES
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## Registration Subject to Cancellation

Registration No	3425995	Registration date	05/13/2008
Registrant	Commonwealth Physician Res 55 North Street Shrewsbury, MA 01545 UNITED STATES	cruiting	

# Goods/Services Subject to Cancellation

Class 035. First Use: 2005/01/01 First Use In Commerce: 2005/01/01
All goods and services in the class are cancelled, namely: Providing information on the topic of promoting patient, physician and employee satisfaction via a global computer network; Consultancy of personnel recruitment; Employment counseling and recruiting; Personnel placement and recruitment; Employment hiring, recruiting, placement, staffing and career networking services

### **Grounds for Cancellation**

Deceptiveness	Trademark Act section 2(a)
Torres v. Cantine Torresella S.r.l.Fraud	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

# Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	COMMONWEALTH PHYSICIAN RECRUITING		
Goods/Services		eling and recruiting; personnel phent hiring, recruiting, placemen services.	

Attachments	opp.pdf ( 3 pages )(14319 bytes )

## **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/tek/
Name	Thomas E. Kenney, Esq.
Date	10/07/2008

#### PETITION TO CANCEL REGISTRATION

#### **PARTIES**

- 1. Opposer Lisa Freda ("Freda") is an individual residing in Washington, D.C.
- 2. Opposer Julie Kaplan ("Kaplan") is an individual residing in Arlington, Virginia.
- 3. Opposer Tammy Pavlock ("Pavlock") is an individual residing in Lutz, Florida.
- 4. Registrant Commonwealth Physician Recruiting LLC was a Massachusetts limited liability company. The LLC was canceled on May 13, 2008.

#### **FACTS**

- 5. In late 2004, Freda, Pavlock and Liz Clemenzi ("Clemenzi") agreed to form a joint venture in the field of physician recruiting.
- 6. In February of 2005, the three agreed that Kaplan would join the joint venture. From March through May of 2005 the joint venture used the mark "Horizon Physician Recruiting" instead of Commonwealth Physician Recruiting. The joint venture resumed using the name and mark "Commonwealth Physician Recruiting" in June of 2005.
- 7. In October of 2006, the four venturers executed a joint venture agreement and agreed to call the venture "Commonwealth Physician Recruiting." There was no dispute by and among the four joint venturers that the joint venture owned the trademark and name "Commonwealth Physician Recruiting."
- 8. In 2007 disputes arose between Clemenzi on the one side, and the other three joint ventures on the other side. Eventually, in January of 2008, Freda, Kaplan and Pavlock asked Clemenzi to withdraw from the joint venture.
- In June of 2007 Clemenzi formed Commonwealth Physician Recruiting, LLC (the "LLC") in Massachusetts.

- 10. In August 2007, the LLC filed a trademark application for "Commonwealth Physician Recruiting" with the United States Patent & Trademark Office. In that application, the LLC claims a date of first use of the mark in commerce of January 1, 2005, even though the LLC was not in existence at that time and the mark was used exclusively by the joint venture in 2005. The specimen submitted with the application is an image of a website owned and controlled by the Opposers, not the Registrant.
- 11. On May 13, 2008 the USPTO issued a certificate of registration for the LLC's "Commonwealth Physician Recruiting" mark. The same day, the LLC filed a certificate of cancellation with the Commonwealth of Massachusetts, asserting that the "company has been closed."
- 12. Freda, Kaplan and Pavlock have never authorized Clemenzi or anyone else to use the mark "Commonwealth Physician Recruiting" outside of the joint venture.
- 13. Clemenzi now claims that she is the owner of the "Commonwealth Physician Recruiting" mark, and has demanded that Freda, Kaplan and Pavlock cease using the mark.

# COUNT ONE (FRAUD ON THE USPTO)

- 14. Opposers repeat and reallege the allegations contained in paragraphs 1 through 13 above.
- 15. In its trademark application, the LLC declared under oath that it was the owner of the trademark sought to be registered. In fact, the LLC was not, and has never been, the owner of the "Commonwealth Physician Recruiting" trademark. The specimen filed with the subject trademark application is an image of a website owned and controlled by the Opposers, not the

Registrant.

16. In its trademark application, the LLC also declared under oath that all statements made in the application were true. In fact, the statement that the LLC has used the mark in commerce since at least January 1, 2005 was false. The LLC was not formed until June of 2007. Further, the joint venture was the party using the mark in 2005.

## <u>COUNT TWO</u> (<u>OPPOSERS' PRIORITY IN MARK</u>)

- 17. Opposers repeat and reallege the allegations contained in paragraphs 1 through 16 above.
- 18. The Opposers have senior rights in and to the mark "Commonwealth Physician Recruiting."
- 19. The continued registration of Registrant's "Commonwealth Physician Recruiting" mark would potentially impair Opposers' rights to continue to use their mark.

# COUNT THREE (ABANDONMENT)

- 20. Opposers repeat and reallege the allegations contained in paragraphs 1 through 19 above.
- 21. The LLC that is the listed owner of the registered trademark was voluntarily canceled the day that the registration issued. The LLC advised the Commonwealth of Massachusetts that the "company has been closed." No assignment of the trademark is on record with the USPTO.

WHEREFORE, for the reasons set forth above, Opposers respectfully request that this Board cancel the Registrant's trademark registration for "Commonwealth Physician Recruiting."